

**OFFICIAL FILE**  
**ILLINOIS COMMERCE COMMISSION**

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

**ORIGINAL**  
COMM. CASE NO. 01-0675  
May 8 12 43 PM '02  
CHIEF CLERK'S OFFICE

RURAL ELECTRIC CONVENIENCE )  
COOPERATIVE CO., and SOYLAND )  
POWER COOPERATIVE, INC., )

Complainants )

vs. )

DOCKET NO. 01-0675

CENTRAL ILLINOIS PUBLIC SERVICE )  
COMPANY d/b/a AMERENCIPS, )

Respondent )

**RESPONSE TO THE MOTION TO DISMISS BY**  
**CENTRAL ILLINOIS PUBLIC SERVICE COMPANY D/B/A AMRENCIPS**  
**AND BY INTERVENOR FREEMAN UNITED COAL MINING COMPANY**

RURAL ELECTRIC CONVENIENCE COOPERATIVE CO., (RECC) Complainant  
by its attorneys GROSBOLL, BECKER, TICE & REIF, Jerry Tice of counsel, and  
SOYLAND POWER COOPERATIVE, INC., (SOYLAND) Complainant, by its attorney  
MICHAEL HASTINGS, in response to the Motion to Strike and Dismiss Counts VII through  
XI with regard to Soyland filed by FREEMAN UNITED COAL MINING COMPANY  
(Freeman) and CENTRAL ILLINOIS PUBLIC SERVICE COMPANY d/b/a AMERENCIPS  
(CIPS) states as follows:

1. Intervenor, Freeman and CIPS have moved to strike and dismiss Counts VII  
through XI in their entirety as the same pertain to Soyland's request for relief in this matter for  
the reason that Soyland does not have standing to file a complaint under the Electric Supplier's

Act and that the Commission has no jurisdiction to grant any relief to Soyland under the Electric Supplier Act and further that Soyland has not alleged that "it should be permitted to serve any customer or premises" within the meaning of Section 7 of the Act. Freeman's and CIPS' claims are contrary to the very essence of the Electric Supplier Act. RECC and Soyland have both alleged in Count I, paragraph 2 as follows:

- (A) RECC and Soyland allege that Soyland is a general-not-for-profit corporation organized and formed by RECC and other not-for-profit corporations to engage in the business of generation, transmission and sale of electric energy in Illinois; and
- (B) Soyland has been financed in whole or in part under the federal "Rural Electrification Act of 1936" and the Acts amendatory and supplementary thereto; and
- (C) Soyland was caused to be organized and formed by RECC and other not-for-profit corporations.

The Electric Supplier Act defines an "electric supplier" as an electric cooperative (220 ILCS 30/3.5) and defines an "electric cooperative" as (i) any not-for-profit corporation that owns, controls, operates or manages directly or indirectly within the state, any plant, equipment or property for the production, transmission, sale, delivery or furnishing of electricity and (ii) either is or has been financed in whole or in part under the Federal "Rural Electrification Act of 1936" and the Acts amendatory thereof and supplementary thereto or (iii) is directly or indirectly caused to be formed by one or more not-for-profit corporations, that is or has been so financed (220 ILCS 30/3.4).

2. Soyland meets the very statutory definition of an electric supplier and has alleged facts in paragraph 2 of Count I of the Complaint that if proven bring Soyland squarely within the definition of an "Electric Supplier". Freeman has not answered the allegations of fact found in paragraph 2 Count I of the Complaint but merely states that Freeman files its Motion to Dismiss pertaining to such allegations. Consequently, Freeman is deemed to have admitted those allegations for purposes of its Motion to Strike the same. The answer of CIPS admits that Soyland is in fact an "electric supplier" within the meaning of the Electric Supplier Act. Consequently neither Freeman nor CIPS can deny that the Commission in fact has jurisdiction of Soyland with respect to Counts VII through XI, at least for purposes of the Motion to Dismiss Soyland as a party to the proceeding.

3. Freeman further fails to answer allegations in paragraph 6 of Count I (existence of the All Requirements Contract for the purchase of all electric energy and power between RECC and Soyland); the allegations of paragraph 7 of Count I (that RECC is a member distribution cooperative of Soyland, RECC did not possess generation capacity and depends upon Soyland generated electricity per the All Requirements Contract, that RECC distributes the electric energy and power generated and distributed by Soyland within the territory delineated to be served by RECC under the Service Area Agreement between RECC and CIPS); the allegations of paragraph 8, 9 and 10 of Count I (that RECC and Soyland intend to benefit each other by the All Requirements Contract so that Soyland generated and transmitted electric energy can be used to provide electric service to the geographic areas delineated to be served by RECC under the RECC/CIPS Service Area Agreement and that Soyland is an intended and direct third party beneficiary of the RECC/CIPS Service Area Agreement to

serve the premises in question). Instead Freeman relies solely upon its Motion to Dismiss with respect to such allegations. Accordingly, for purposes of the Motion to Dismiss Freeman is deemed to have admitted the factual allegations set forth in paragraphs 6, 7, 8 and 9 regarding the interest and right of Soyland to serve the premises in question.

4. CIPS admits in its answer to paragraph 6 of Count I that RECC and Soyland are parties to the "All Requirements Contract" and by doing so admits the contract, its purposes and intent. However, after admitting that such contract exists CIPS moves to strike allegations within paragraph 6. CIPS cannot both answer by admitting allegations that the contract exists and then move to strike allegations regarding the same. Likewise, in paragraph 7 CIPS admits that RECC is a member distribution cooperative of Soyland then moves to strike the balance of paragraph 7 but gives no reason for striking the same. Such allegations are factual allegations explaining the relationship between RECC and Soyland and are relevant to the Complaint of Soyland in this matter. CIPS cannot answer allegations setting up the corporate relationship of Soyland and RECC by admitting the same and then move to strike factual allegations setting forth reasons for such corporate relationship. Once CIPS answers the basic allegations of the Complaint, the Motion to Strike becomes moot. The answer of CIPS to paragraphs 8, 9 and 10 of Count I constitute a denial of the allegations in total in those respective paragraphs followed by a motion by CIPS to strike the same. CIPS cannot both answer and move to strike pleadings. Once the answer is given as in this case, the Motion to Strike becomes moot and should therefore be denied Arora v Chui 279 Ill App 3d 321; 664 NE 2d 1101; 216 Ill Dec 173 (2<sup>nd</sup> Dist. 1996).

5. The Electric Supplier Act grants an "electric supplier" the right to serve "premises"

based upon three possibilities. The first possibility is that a Commission approved Service Area Agreement exists between competing electric suppliers regarding the right of two competing electric suppliers to serve particular premises (220 ILCS 30/6). The second possible right is based upon service by an electric supplier to a particular "premises" on July 2, 1965 and that the electric supplier has the right to continue thereafter to provide such premises with all of its electric service needs (220 ILCS 30/5). The third possibility for service is based upon proximity of competing electric suppliers' July 2, 1965, existing "lines" to the premises proposed to be served provided such lines are "adequate" or can be made "adequate" by the electric supplier increasing the capacity of such lines to meet the service requirements of the customer (220 ILCS 30/3.1) (220 ILCS 30/8). In making the determination under Section 8, (proximity rights) the Commission may consider lesser weight factors such as (i) the customer preference as to a supplier; (ii) which supplier was first furnishing service in the area; (iii) the extent to which each supplier assisted in creating the demand for the proposed service; and (iv) which supplier can furnish the proposed service with the smaller amount of additional investment (220 ILCS 30/8). The Commission and the Courts have long held that in making the determination as to which electric supplier has the right to serve a particular premises, the Commission must first look to see if there is a right existing under Section 6 of the Act (Service Area Agreement). If so then the Agreement controls the rights of the parties to the exclusion of the Act except to the extent the Act is incorporated within the Agreement Rural Electric Convenience Cooperative Co., v Illinois Commerce Commission 75 Ill 2<sup>nd</sup> 142; 387 NE 2d 670; 25 Ill Dec 794, 796 (1979). To the extent the Agreement does not control or does not exist, then the Commission must first look to see if any grandfathered rights exist under

Section 5 of the Act and if not then the decision must be made under Section 8 of the Act concerning proximity to lines in existence on July 2, 1965 Coles-Moultrie Electric Cooperative v Illinois Commerce Commission 76 Ill App 3d 165; 394 NE 2d 1068; 31 Ill Dec 750, 752 (4<sup>th</sup> Dist. 1979).

6. It is unequivocally clear that Soyland is an "electric supplier" as defined by the Act and that the Commission has jurisdiction over Soyland. The only remaining reason cited by Intervenor Freeman and CIPS in the Motion to Dismiss Counts VII through XI pertaining to Soyland is Section 7 of the Act. However, Section 7 of the Act has never been recognized by the Commission or any court as providing any substantive right to serve a particular premise. Rather Section 7 provides for the giving of notice by an electric supplier to another electric supplier of the intention to provide electric service to a certain premise. If a dispute arises between the electric suppliers regarding service to the premise made the subject of that notice, then the Commission is required to decide the service dispute based upon Section 8 (proximity) of the Act. Certain time periods are set forth in Section 7 within which the electric supplier receiving such notice must act but otherwise there are no substantive rights of service to particular premises nor a basis for making a substantive determination on service rights by the Commission contained within Section 7. Consequently, the claim by both Intervenor Freeman and CIPS that Soyland does not allege that it "should be permitted to serve any customer or premises" as noted in Section 7, is without merit.

7. Soyland alleges in Count VII that it is entitled to provide all the electric service to be distributed by RECC to the premises in question pursuant to the "All Requirements Contract between Soyland and RECC; in Count VIII that Soyland has a right under Section 5

of the Act to provide electric service to the premises by reason of the grandfathered service rights of its member cooperative, RECC; in Count IX that Soyland is entitled to provide electric service to the premises by reason of Section 8 of the Act regarding proximity on July 2, 1965 lines and facilities because of the rights of Soyland to utilize lines and facilities of RECC or authority to connect to lines and facilities of others in existence on July 2, 1965 which are closer in proximity to the premises in question than those of CIPS; and by reason of Count X in which Soyland alleges that it has a right to provide electric service to the premises in question by reason of Section 1 of the Agreement (grandfathered service rights of RECC to serve the premises in question) which Soyland right exists through its All Requirements Contract with RECC and the Service Area Agreement between RECC and CIPS. These allegations set forth claims recognized under Section 6, Section 5 and Section 8 of the Act. Because the Motion to Dismiss admits all such facts alleged, and because such claims are recognized claims under the Act by an "electric supplier" and which definition of "electric supplier" Soyland squarely meets, the Motion to Strike Counts VII through XI by Freeman and CIPS should be denied.

8. The Commission on occasion when deciding service disputes under Section 8 of the Act (proximity) has taken into account the additional investments provided by both the generation cooperative and its member distribution cooperative when calculating the total cost of additional investment required to serve the new customer (Illinois Power Company v Egyptian Electric Cooperative Association Ill Com. Comm. ESA 176, Sept. 7, 1977; Central Illinois Public Service Company v Southeastern Illinois Electric Cooperative Ill. Com. Comm. ESA 53, Feb. 14, 1968). In this case Freeman claims its load will require service from a 34.5

KV line. Given the corporate relationship between RECC and Soyland, construction of some or all of such facilities may be undertaken by Soyland. Thus, Soyland may play an integral part in providing electric facilities for the customer's premises. Such corporate relationship exemplifies sufficient interest by Soyland in the outcome of the case so that Soyland's standing as a party should never be in doubt.

9. The Rules of the Commission governing intervention (83 Ill. Adm. Code Section 200.200) allow any person to intervene who has a direct interest in the proceeding. Certainly the allegations of the Complaint reveal Soyland will sell all of the electric energy provided to the customer's premises to which service is in dispute, should RECC be the rightful electric supplier. Additionally because of the corporate relationship of Soyand and RECC and depending upon the customer's service requirements, Soyland may be called upon to provide certain of the facilities needed to furnish electric service to the premises. This reveals as much interest in the proceeding on the part of Soyland as the Freeman has in the outcome. If Soyand had not been a party to the complaint its interest would be sufficient to allow Soyland to intervene under the Commission's liberal rules of intervention. Accordingly, Soyland has sufficient interest in the case to provide standing either as an intervenor or as a party.

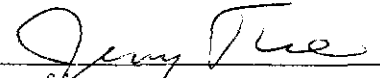
WHEREFORE, RECC and Soyland request the Commission to deny the Motion to Strike Counts VII through XI, filed by Intervenor Freeman and further to dismiss the Motion of Intervenor Freeman to strike paragraphs 6 and paragraphs 7 through 10 of Count I and further to deny the Motion to Strike Counts VII through XI filed by CIPS and further requests the Commission to deny the request by CIPS to strike portions of paragraph 6, portions of



paragraph 7, all of paragraph 8, all of paragraph 9 and all of paragraph 10 and for such other and further relief as the Commission deems just and equitable.

RURAL ELECTRIC CONVENIENCE  
COOPERATIVE, CO., Complainant

By: GROSBOLL, BECKER, TICE & REIF

By:   
One of its attorneys

SOYLAND POWER COOPERATIVE, INC.  
Complainant,

By:   
Its attorney

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**PROOF OF SERVICE**

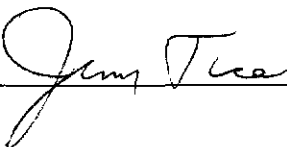
I, JERRY TICE, hereby certify that on the 8 day of May, 2002, I deposited in the United States mail at the post office at Petersburg, Illinois, postage fully paid, a copy of the document attached hereto and incorporated herein, addressed to the following persons at the addresses set opposite their names:

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